

## **Fact Sheet #79E: Joint Employment in Domestic Service Employment under the Fair Labor Standards Act (FLSA)**

Domestic service employment means services of a household nature performed by a worker in or about a private home (permanent or temporary). The term includes services performed by workers such as babysitters, cooks, waiters, maids, housekeepers, nannies, nurses, janitors, caretakers, handymen, gardeners, home health aides, personal care aides, and family chauffeurs as well as those provided by “direct care workers,” a term that includes companions, personal care aides, home health aides, nurses, and other workers who provide assistance to individuals in their homes. This listing is illustrative and not exhaustive. Domestic service employees are generally covered under the Fair Labor Standards Act (FLSA) and therefore must be paid at least the federal minimum wage for all hours worked and overtime pay at not less than time and one half the regular rate of pay for hours worked over 40 in a workweek. Section 13(a)(15) of the FLSA provides a narrow exemption from the minimum wage and overtime requirements for casual babysitters and workers employed to perform companionship services for an elderly person or person with an illness, injury or disability. Section 13(b)(21) of the FLSA provides an exemption from the overtime, but not the minimum wage requirement for those employees who reside in the private home where they work (live-in domestic service employees).

This fact sheet summarizes the Department’s longstanding joint employment regulations and guidance, and provides examples of how these existing principles would apply to several common domestic service scenarios.

### **What is joint employment?**

A single individual may be considered an employee of more than one employer under the FLSA. Joint employment is employment by one employer that is not completely disassociated from employment by other employers; it is present when an employee is economically dependent on more than one employer. A determination of whether joint employment exists is to be determined based upon all the facts of the particular case. For instance, two employers may both supervise the same employee or one may hire and set the pay rates while another has authority to supervise or fire the worker. As a general example, workers sent by a cleaning company to a client-hotel to clean hotel rooms may be jointly employed by both the cleaning company and the hotel. Similarly, an agency that sends a direct care worker to an individual’s home may be a joint employer with the family or household of the individual.

### **What are the obligations of joint employers under the FLSA?**

Generally, where a joint employment relationship exists, each of the employers must ensure that the employee receives all employment-related rights under the FLSA (including payment of at least the federal minimum wage for all hours worked and overtime pay at not less than time and one half the regular rate of pay for hours worked over 40 in a workweek). However, under the Final Rule concerning domestic service employment under the FLSA (effective January 1, 2015), in joint employment situations, the individual, family, or household employing the worker will be able to claim the companionship services or live-in domestic service worker exemption when the duties or residency test is met. For information on the companionship services exemption see [Fact Sheet # 79A: Companionship Services Under the Fair Labor Standards Act \(FLSA\)](#). For information about the live-in domestic service worker exemption see [Fact Sheet #79B: Live-In Domestic Service Workers](#)

[Under the Fair Labor Standards Act \(FLSA\)](#). Therefore, the individual, family or household will not be responsible for ensuring that the employee receives minimum wage and overtime rights under the FLSA when the companionship services exemption applies and will not be responsible for ensuring that the employee receives overtime when the live-in exemption applies. Under the Final Rule, third party employers of direct care workers (such as home care staffing agencies) are not permitted to claim either the exemption for companionship services or the exemption for live-in domestic service employees. Third party employers may not claim either exemption even when the employee is jointly employed by the third party employer and the individual, family, or household using the services.

### **How is joint employment determined?**

Determinations about the existence of joint employment are made by examining all the facts in a particular case and assessing the economic realities of the work relationship. Factors to consider may include whether a possible employer has the power to direct, control, or supervise the worker(s) or the work performed; whether a possible employer has the power to hire or fire, modify the employment conditions or determine the pay rates or the methods of wage payment for the worker(s); the degree of permanency and duration of the relationship; where the work is performed and whether the tasks performed require special skills; whether the work performed is an integral part of the overall business operation; whether a possible employer undertakes responsibilities in relation to the worker(s) which are commonly performed by employers; whose equipment is used; and who performs payroll and similar functions. Other factors also may be considered and no one factor is controlling.

**Example:** Mary contacts her state government about receiving home care services. The state has a “self-direction program” that allows Mary to hire a direct care worker through an entity that has contracted with the state to serve as the “fiscal/employer agent” for program participants who employ direct care workers. The “fiscal/employer agent” performs tasks similar to those that commercial payroll agents perform for businesses, such as maintaining records, issuing payments, addressing tax withholdings, and ensuring that workers’ compensation insurance is maintained for the worker, but is not involved in any way in the daily supervision, scheduling, or direction of the employee. Mary has complete budget authority over how to allocate the funds she receives under the Medicaid self-direction program, negotiates the wage rate with the direct care worker, is wholly responsible for day-to-day duty assignments, and has the sole power to hire and fire her direct care worker.

In the above scenario, the fiscal/employer agent is likely not an employer of the direct care worker, and Mary is likely the sole employer. The fiscal/employer agent has no power to hire or fire, direct, control, or supervise the worker and cannot modify the pay rate or modify the employment conditions. The work is not performed on the fiscal/employer agent’s premises, and the fiscal/employer agent has provided no tools or materials required for the tasks performed. However, any change in the specific facts of this scenario, such as if direct care workers are required to obtain approval from the fiscal/employer agent in order to arrive late or be absent from work or if the fiscal/employer agent sets the direct care workers’ specific hours worked, may lead to a different conclusion regarding the employer status of the fiscal/employer agent.

**Example:** Michael contacted his county government about receiving home care services. A county social worker met with Michael and made a determination with respect to Michael’s financial eligibility and need for services. The social worker determined the tasks to be performed for Michael and the hours per week required to perform those tasks. The social worker provided Michael with a list of potential workers but after Michael forgot to contact the potential workers several times, the social worker hired the direct care worker himself. While Michael is responsible for the day-to-day supervision of the direct care worker, the social worker intervenes if a problem arises such as arranging for another worker should the primary worker become

unavailable. The county pays the direct care worker directly via check, keeps records of hours worked, and the hourly rate of pay for the worker is determined by the county.

Here, the direct care worker's wages are paid by the county and the county controls the rate of pay and the method of payment. The county maintains employment records. The county exercises considerable control over the structure and conditions of employment by determining the number of hours for work and what tasks are to be performed. The county intervenes in issues between the direct care worker and consumer and the county social worker hired the worker. In this instance, the county is likely a joint employer with the consumer.

**Example:** ABC Company advertises as a "registry" that provides potential direct care workers. The registry conducts a background screening and verifies credentials of potential workers, and assists clients by locating direct care workers who may be able to meet a client's needs. ABC Company informs Ann, a direct care worker, of the opportunity to work for a potential client. If Ann is interested in the opportunity, she is responsible for contacting the client for more information. Ann is not obligated to pursue this or any other opportunity presented, and she is not prohibited from registering with other referral services or from working directly with clients independent of ABC Company. The registry does not provide any equipment to Ann, and does not supervise or monitor any work Ann performs. ABC Company has no power to terminate Ann's employment with a client. ABC Company processes Ann's payroll checks according to information provided by clients, but does not set the pay rate.

In this scenario, Ann is likely not an employee of ABC Company. There is no permanency in the relationship between the registry and Ann. The registry does not provide any equipment or facilities, exercises no control over daily activities, and has no power to hire or fire. Ann is able to accept as many or as few clients as she wishes. The client sets the rate of pay and negotiates directly with Ann about which services will be provided. However, this does not mean that every "registry" will not be an employer. A fact-specific assessment must be conducted to determine whether a registry is an employer. For example, a nursing registry that maintains a log of assignments showing the shifts worked, establishes the rate which will be charged, and exercises control over the nurses' behavior and the work schedules would be an employer.

### **Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

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